APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

NO. 73-1723

JOHN L. HILL,
ATTORNEY GENERAL OF TEXAS,
Appellant

v.

MICHAEL L. STONE, ET AL,
Appellees

APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS

APPEAL DOCKETED MAY 17, 1974
PROBABLE JURISDICTION NOTED
OCTOBER 15, 1974

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MICHAEL L. STONE, ET AL,

Appellees

APPEAL FROM THE
UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS

DOCKET ENTRIES

MICHAEL L. STONE, ET AL

V. CA-4-1975

R. M. STOVALL, ET AL

(Full title omitted in printing)

4-17-72	1 - COMPLAINT by Plaintiffs filed.
4-28-72	2 - PLAINTIFF'S FIRST AMENDED COMPLAINT, filed.
5-8-72	3 - ORIGINAL ANSWER of Defendants, R. M. Stovall, Mayor; S. G. Johndroe, Jr., City Attorney; Roy A. Bateman, City Secretary; Leonard E. Briscoe, Taylor Gandy, Jess M. Johnston, Jr., W. S. Kemble, Jr., John J. O'Neill, Ted C. Peters, Pat Reece and Mrs. Margret Rimmer, Council Members; and The City of Fort Worth, a Municipal Corporation, filed.
5-9-72	4 - ORIGINAL ANSWER of Defendant Crawford C. Martin, Attorney General of the State of Texas, filed.
5-10-72	5 - DESIGNATION AND COMPOSITION ORDER of the Three-Judge Court panel by John R. Brown, Chief Judge, Fifth Circuit, filed.

6-5-72	6 - ORDER SETTING PRELIMINARY PRE-TRIAL HEARING, filed.
11-8-72	7 - PRE-TRIAL ORDER, filed.
2-16-73	8 - TRIAL BRIEF for Plaintiffs, filed.
3-2-73	9 - TRIAL BRIEFS for all Defendants, filed.
3-19-74	10 - INTERVENOR'S MOTION FOR LEAVE TO INTERVENE ON THE GROUND OF COMMON QUESTION by the City of Corpus Christi, a Municipal Corporation, filed.
3-25-74	11 - ORDER OVERRULING MOTION TO INTERVENE, filed.
3-25-74	13 - MEMORANDUM OPINION by Thornberry, Circuit Judge; Woodward, District Judge, specially concurring; and Brewster, District Judge, concurring in result; filed.
3-25-74	14 - JUDGMENT by Judges Thornberry, Woodward, and Brewster, filed.
3-31-74	CLOSED, JS-6 CARD mailed.
4-3-74	15 - MOTION TO MODIFY JUDGMENT AND/OR FOR PARTIAL STAY by all Defendants, filed.

4-5-74	12 - REPLY TO DEFENDANTS' MOTION TO MODIFY JUDGMENT by Plaintiffs, filed.
4-9-74	16 - ORDER denying Defendants' MOTION TO MODIFY JUDGMENT AND/OR FOR PARTIAL STAY by Judges Thornberry and Woodward, filed.
4-17-74	17 - NOTICE OF APPEAL by all Defendants except Attorney General of Texas, filed.
4-18-74	18 - NOTICE OF APPEAL by John L. Hill, Attorney General of Texas, filed.
4-15-74	APPLICATION FOR A PARTIAL STAY OF A JUDGMENT OF A THREE-JUDGE DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS by Petitioner in John L. Hill, Attorney General of Texas v. Michael L. Stone, et al., Application A-986, filed in SUPREME COURT.
4-17-74	OPPOSITION TO APPELLANT'S APPLICATION FOR PARTIAL STAY OF MANDATE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION by Respondents, Michael L. Stone, et al., filed in SUPREME COURT.

4-25-74	ORDER granting application for partial stay by SUPREME COURT, filed.
5-17-74	APPEAL DOCKETED in SUPREME COURT as HILL V. STONE, ET AL., NO. 73-1723.
10-15-74	ORDER noting PROBABLE JURISDICTION in SUPREME COURT, filed.

NOTATIONS

The following items appear in an appendix to the Jurisdictional Statement at the page noted and are not reprinted in this appendix:

Judgment of the lower court 1a

Memorandum Opinions of the lower court 5a

Notice of Appeal of Defendant Attorney General of Texas 1b

Full text of:

- Tex. Const. Art. VI, Section 3 (1955) 1c
- Tex. Const. Art. VI, Section 3a (1955) 1c
- Tex. Election Code Ann. Art. 5.03 (Supp. 1973) 2c
- Tex. Election Code Ann. Art. 5.04(a) (Supp. 1973) 3c
- Tex. Election Code Ann. Art. 5.07 (1967) 3c
- Charter of the City of Fort Worth, Ch. 25, § 19. . . . . 4c

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

MICHAEL L. STONE ET AL.,		
Plaintiffs,		NO.
VS.		CA-4-1975
CITY OF FORT WORTH ET AL.,		
Defendants.		

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES OF THE CITY OF FORT WORTH; R. M. STOVALL, ITS MAYOR; S. G. JOHNDROE, JR., ITS CITY ATTORNEY; ROY A BATEMAN, ITS CITY SECRETARY; AND THE MEMBERS OF THE CITY COUNCIL THEREOF

Notice is hereby given that the City of Fort Worth; R. M. Stovall, its Mayor; S. G. Johndroe, Jr., its City Attorney; Roy Bateman, its City Secretary; and the Members of the

City Council thereof, defendants in the above numbered and styled cause, hereby appeal to the Supreme Court of the United States from the final Judgment rendered and entered herein on the 25th day of March, 1974.

This appeal is taken pursuant to 28 USC, § 1253.

Respectfully submitted,

S. G. JOHNDROE, JR.
City Attorney of the City
of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

Attorney for the Above
Named Defendants

(Affidavit of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

MICHAEL L. STONE, ET AL. |

VS. | CA-4-1975

R. M. STOVALL ET AL. |

PRE-TRIAL ORDER

A pre-trial conference was held in the above entitled and numbered cause before the Hon. Leo Brewster, Resident Judge, on the 8th day of November, 1972. Don Gladden and Marvin Collins appeared as counsel for plaintiffs; S. G. Johndroe, Jr., City Attorney, appeared as counsel for defendants, R. M. Stovall, Mayor; S. G. Johndroe, Jr., City Attorney; Roy A. Bateman, City Secretary; the City of Fort Worth; and its City Council members; and Robert B. Davis, Assistant Attorney General of the State of Texas,

appeared as counsel for defendant, Crawford Martin.

1.

JURISDICTIONAL QUESTIONS

No jurisdictional questions are raised by defendants other than those connected with their respective claims that plaintiffs have failed to state a claim upon which relief can be granted.

2.

PENDING MOTIONS AND
QUESTIONS RAISED THEREIN

Each of the respective defendants has filed or adopted motions to render judgment on the pleadings and to dismiss Plaintiffs' First Amended Complaint.

3.

PLAINTIFFS' CLAIMS

I. Factual Claims

(a) CLASS ACTION

The plaintiffs are members of a class of natural persons in the City of Fort Worth who voted

in the City of Fort Worth bond election of April 11, 1972, against whom the defendant, City of Fort Worth and defendants city officials of the City of Fort Worth have unconstitutionally discriminated, against whom the defendant City of Fort Worth and the defendants city officials of the City of Fort Worth have threatened to, and are about to, unconstitutionally discriminate, and against whom the defendant Attorney General has threatened to, and is about to, unconstitutionally discriminate. The unconstitutional discrimination just complained of consists of the enforcement of the provisions of the Constitution and Statutes of the State of Texas, and a portion of the Fort Worth City Charter, all of which require ownership of property which has been rendered for taxation as a prerequisite to the right of qualified voters to vote in non-federal bond elections, as hereinafter more fully appears.

This class of Fort Worth citizens is so numerous that it is impractical to join all of them in one action. There are questions of law common to all of the members of the class, to-wit: the application of Article 6 §§ 3 and 3a of the Texas Constitution, Articles 5.03, 5.04, and 5.07 of the Texas Election Code, and a portion of Chapter 25, § 19 of the Fort Worth City Charter, and the application of a system of dual balloting originally conceived by the Attorney General of the State of Texas, and applied in the Fort Worth city bond election held on April 11, 1972. There are questions of fact common to all members of the class, since the discrimination of which plaintiffs complain took place during or arises or will arise out of, the Fort Worth city bond election held on April 11, 1972. The claims of the parties plaintiff to this action are typical

of the claims of the class in that the members of the class are seeking to have their votes counted equally with the votes of other, more privileged voters who were permitted to vote in the Fort Worth city bond election of April 11, 1972. The parties plaintiff in this action will fairly and adequately protect the interests of the class as a whole. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members of the class not parties to this adjudication. The defendants have acted, refused to act, threatened to act, threatened to refuse to act, and are about to act and about to refuse to act, on grounds generally applicable to the plaintiffs'

class, to-wit: the defendants have refused, threatened to refuse, and are about to refuse to sell, certify, approve, or otherwise ratify Proposition Number II which was submitted to the qualified voters of the City of Fort Worth in a bond election held on April 11, 1972, in which a majority of the qualified voters of the City of Fort Worth voted for Proposition Number II. The defendants have refused, threatened to refuse, and are about to refuse to so sell, certify, and approve and otherwise ratify these bonds for the reason that a majority of the persons who voted in that election as property owners voted against Proposition Number II, such refusal and threatened refusal being made by the defendants on the basis that Article 6 §§ 3 and 3a of the Texas Constitution, Articles 5.03, 5.04 and 5.07 of the Texas Election Code,

and a portion of Chapter 25 § 19 of the Fort Worth City Charter, require a majority of persons voting as property owners to vote in favor of the proposition, as a prerequisite to such selling or approval, or both such selling and approval. Furthermore, the questions of law and fact common to the members of the class dominate over any other questions which affect only individual members.

(b) That the existence of Article 6, Sections 3 and 3a, of the Texas Constitution (1955), Articles 5.03 and 5.04 of the Texas Election Code Ann. (Supp. 1969), and Article 5.07 of the Texas Election Code Ann. (1967) tends to chill the free exercise of the franchise in bond elections. On their face, these provisions are a threat to the free exercise of the franchise in non-federal elections.

(c) That the classification of voters by Article 6, Sections 3 and 3a, of the Texas Constitution (1955) and Articles 5.03 and 5.04 of the Texas Election Code Ann. (Supp. 1969) and Article 5.07 of the Texas Election Code Ann. (1967) is not necessary to promote any conceivable compelling state interest.

II. Plaintiffs' Legal Claims

(i) Preliminary

(a) Jurisdiction is conferred on this Court by 42 U.S.C. § 1983, and 28 U.S.C. § 1343 (3).

(b) That this case is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

(c) That this case is a proper one for a declaratory judgment pursuant to 28 U.S.C., Sections 2201 and 2202.

(d) That this case is a proper one for a three-judge court pursuant to 28 U. S. C., Sections 2281 and 2284.

(e) Thus there is plainly no adequate administrative remedy for the plaintiffs and they therefore need not exhaust or attempt to exhause any further administrative remedies.

(f) That the damage and injury which has been done and is about to be done to plaintiffs by reason of the constitutional and statutory provisions challenged herein is such that there is no adequate remedy at law.

(ii) Merits

(a) That Article 6, Sections 3 and 3a of the Texas Constitution (1955), Articles 5.03 and 5.04 of the Texas Election Code Ann. (Supp. 1969), and Article 5.07 of the Texas Election Code Ann. (1967) are unconstitutional, since

they violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States of America.

(b) Plaintiffs Michael L. Stone, Dorothy I. Ellis, and James D. Henderson have been aggrieved and will be aggrieved by the attacked Texas provisions and Fort Worth City Charter provisions as follows:

They voted for (in favor of) Proposition Number II which was passed by a majority of qualified voters for the City of Fort Worth but which was disapproved by the persons voting as property owners. These plaintiffs, as persons who have not rendered property for taxation, have been discriminated against, since their votes were not given equal weight by the defendants compared to the votes of the property owners. They have thus been denied equal protection of

the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

(c) Plaintiffs Pat Crowley and Marjorie M. Watson, as rendering property owners, voted for (in favor of) Proposition Number II which, though it received a majority of the votes cast in the aggregate of all of the qualified voters of the City of Fort Worth, was defeated in the rendering property owners tabulation. As members of the general class of persons who voted for (in favor of) Proposition Number II, their votes have been denied equal weight with the votes of the rendering property owners who voted against Proposition Number II. This is so, since all rendering property owners who voted against Proposition Number II were given a veto power over all other voters voting in the April 11, 1972 election. Their constitutional rights to

equal protections of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States have thus been violated.

All of the plaintiffs are unwilling to have their right to vote, or their right to have their vote counted, based upon wealth, property ownership of any kind, or rendition of property for taxation. As citizens of Fort Worth and of the United States these plaintiffs and 14,602 others like them have a right to more than a practice vote in a bond election. The children of these plaintiffs and the children of many of the other 14,602 persons similarly situated have just as much need for an adequate library as do the children of the more fortunate property owners. Unless it is right, constitutionally, for the wealthy citizens of Fort Worth to rule and the poor citizens of Fort Worth to be ruled

by them, all of these plaintiffs were denied equal protection of the law.

(d) That this case is properly one for injunctive relief.

III. Relief Requested

(i) Preliminary

That a three-judge court be convened to hear this cause.

(ii) Declaratory

The plaintiffs respectfully request the Court to declare Article 6, Sections 3 and 3a of the Texas Constitution, Articles 5.03, 5.04, and 5.07 of the Texas Election Code, and that portion of Section 19 of Chapter 25 of the City Charter of the City of Fort Worth which provides "Provided, that no bonds shall be issued, or bonded debt created, unless authority therefor shall first be submitted to the qualified voters

who pay taxes on property situated within the corporate limits of the City of Fort Worth; and, if a majority of the votes cast at such election are in favor of the issuance of such bonds, then such issue shall be made; but, should the majority of the votes cast at said election be against the proposition, then such bonds shall not be issued." to be in irreconcilable conflict with the Fourteenth Amendment to the United States Constitution and hence unconstitutional and void.

(iii) Injunctive

(a) The plaintiffs respectfully request this Court to direct the defendants, S. G. Johndroe, the City Attorney, and his successors in office, the defendant City Council members and their successors in office, and the defendant City of Fort Worth to not consider the fact that a majority of property owners whose property

had been rendered for tax purposes voted against Proposition Number II in deciding whether or not to sell, issue, certify or otherwise approve the bonds submitted to the voters of the City of Fort Worth in the April 11, 1972 bond election, but rather that they consider without differentiation, the aggregate vote cast and tabulated by all persons casting ballots.

(b) The plaintiffs respectfully request the Court to direct the Attorney General of Texas and his successors in office to not consider the fact that a majority of property owners voted against Proposition Number II in deciding whether or not to sell, issue, certify or otherwise approve the bonds submitted to the voters of the City of Fort Worth in the April 11, 1972 bond election, but rather that he consider, so far as the number of votes cast and tabulated, the fact

that a majority of resident qualified voters of the City of Fort Worth voted for (in favor of) Proposition Number II in reaching such a decision.

(c) The plaintiffs respectfully request that this Court enjoin all of the defendants and their successors in office from considering or giving any force or effect to Article 6, Sections 3 and 3a of the Texas Constitution, Articles 5.03, 5.04, and 5.07 of the Texas Election Code, and that portion of Section 19 of Chapter 25 of the City of Fort Worth's Charter set forth in number (ii) above, in connection with the votes cast by the citizens of Fort Worth, Texas, in the April 11, 1972 bond election of the City of Fort Worth.

(d) The plaintiffs respectfully request this Court to enjoin all the defendants and their successors in office from giving any effect or

force in the future to Article 6, Sections 3 and 3a of the Texas Constitution, Articles 5.03, 5.04, and 5.07 of the Texas Election Code, and that portion of Section 19 of Chapter 25 of the Fort Worth City Charter set forth in number (ii) above, including segregating ballots.

(e) That all defendants be enjoined from giving any force, effect or validity to Article 6, Sections 3 and 3a, of the Texas Constitution (1955), Articles 5.03 and 5.04 of the Texas Election Code Ann. (Supp. 1969), and Article 5.07 of the Texas Election Code Ann. (1967), in any future bond election.

4.

DEFENDANTS' CLAIMS

A. Claims of Defendants, R. M. Stovall, Mayor; S. G. Johndroe, Jr., City Attorney; Roy A. Bateman, City Secretary;

Leonard E. Briscoe, Taylor Gandy, Jess M. Johnston, Jr., W. S. Kemble, Jr., John J. O'Neill, Ted C. Peters, Pat Reece and Mrs. Margret Rimmer, Council Members; and the City of Fort Worth, a Municipal Corporation

(1) That the plaintiffs have wholly failed to state a claim upon which relief can be granted and these defendants seek judgment on the pleadings dismissing the Complaint.

(2) That there are no facts pleaded or present showing that plaintiffs have been unconstitutionally discriminated against or that these defendants have threatened to, or are about to, unconstitutionally discriminate against plaintiffs.

(3) That there are no facts pleaded or present showing that plaintiffs exist as a class; that there are no facts pleaded or present showing or even remotely indicating that any class exists,

or that any class is so numerous that joinder of all members is impracticable; that there are no facts pleaded or present showing that there are questions of law or fact common to any class; and that there are no facts pleaded or present showing that there are claims of any party plaintiff which are typical of any class or that plaintiffs are representative parties who are in a position to fairly and adequately protect the interests of any purported class.

(4) That there are no facts pleaded or present showing that these defendants have acted in any manner injurious to the rights of any class or that a class action is superior to other available methods for the fair and efficient adjudication of any purported controversy.

(5) That the law of this State with respect to Article 6, Sections 3 and 3a, of the

Texas Constitution and Articles 5.03, 5.04 and 5.07 of the Texas Election Code is expressed in Montgomery Independent School District v. Crawford Martin, Attorney General of Texas, 464 S. W. 2d 638 (Tex. 1971), wherein the Supreme Court of Texas upheld the validity of Article 6, Section 3a, when challenged on the ground that it violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

(6) That each of the defendants has taken an oath or affirmed that he will support, protect and defend the Constitution and laws of the State of Texas.

(7) That there are no facts pleaded or present showing or even remotely indicating that plaintiffs have been discriminated against in any manner nor that these defendants have deprived

plaintiffs of any of their rights, privileges or immunities guaranteed by the Fourteenth Amendment.

(8) That it is a realistic matter of compelling necessity in general obligation tax bond capital improvement financing that all property, of whatsoever kind or character, real, personal or mixed, be rendered and placed on the tax rolls of the City of Fort Worth; that Proposition No. II asks the voters "if the City Council of the City of Fort Worth should be authorized to issue its negotiable coupon bonds in the principal sum of Six Million, Eight Hundred and Sixty Thousand Dollars ($6,860,000) for the purpose of making permanent city improvements by constructing, building, improving and equipping buildings for the Public Library System of the City of Fort Worth," and further asks the voters

to authorize the

> "levy (of) a sufficient tax to pay the interest on said bonds and create a sinking fund sufficient to redeem said bonds at the maturity thereof.";

That Article 7145 of the Revised Civil Statutes of the State of Texas provides that

> "All property, real, personal or mixed, *** is subject to taxation, and the same shall be rendered and listed as herein prescribed.";

and that Article 7145 was adopted by the Legislature pursuant to the provisions of Article 8, Section 1, of the Constitution of the State of Texas, which provides in part:

> "All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value ***."

That Article 7152 of the Revised Civil Statutes speaks to the manner in which all prop-

erty shall be listed or rendered and provides as follows:

"Art. 7152. How rendered

All property shall be listed or rendered in the manner following:

(1) By the owner. Every person of full age and sound mind, being a resident of this State, shall list all of his real estate, moneys, credits, bonds or stock of joint stock or other companies (when the property of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and all other property.

(2) As Agent. He shall also list all lands or other real estate, moneys and other personal property invested, loaned or otherwise controlled by his as agent or attorney, or on account of any other person, company, or corporation, whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

(3) Minor. The property of

a minor child shall be listed by his guardian, or by the person having such property in charge.

(4) Separate property of married person. The separate property of each spouse shall be rendered by the owner thereof, but the husband or wife of the owner may act as agent of the owner in such rendition.

(5) Idiot. The property of any idiot or lunatic, by the person having charge of such property.

(6) Cestui que trust. The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator.

(7) Receivers. The property of corporations whose assets are in the hands of receivers, by such receivers.

(8) Corporations. The property of a body politic or corporate, by the president or proper agent or officer thereof.

(9) Copartnership. The property of a firm or company,

by a partner or agent thereof.

(10) Manufactories. The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise."

That under Article 8, Section 1, of the Constitution of the State of Texas it is required that

"Taxation shall be equal and uniform.";

and that as a matter of law, to permit a wilful non-renderer to impose a tax lien on a renderer's property without being required to assume a commensurate burden himself would be, in effect, to deprive the renderer of property without due process of law.

(9) That the principal of and interest on general obligation tax-supported bonds issued by the City of Fort Worth are and will be paid

solely from the proceeds derived from taxes levied, assessed and collected from persons who have rendered and on the tax rolls real, personal or mixed property; and that the requirement of rendition and disclosure of property for the purposes of ad valorem taxation is of the utmost importance, is a compelling necessity for an effective system of tax assessment and collection, and is inextricably related to the creation of, payment and discharge of tax bond obligations.

That the assessed valuation of real (including improvements), personal and mixed property rendered for taxation in the City of Fort Worth for the fiscal year 1970-71 was $1,370,483,290, and of such assessed valuation, real property constituted $1,017,895,540 and personal and mixed property amounted to $352,587,750; and that the assessed valuation of

real (including improvements), personal and mixed property in the City of Fort Worth for the fiscal year 1971-72 was $1,444,024,440, and of such assessed valuation, real property constituted $1,077,271,500 and personal and mixed property amounted to $366,752,240.

That for the year ending September 30, 1970, the City of Fort Worth derived $16,388,154 in taxes from real property rendered and placed on the assessment rolls and $5,676,669 from personal and mixed property rendered and placed on the assessment rolls; that for the year ending September 30, 1971, the City of Fort Worth derived $18,205,947.35 in taxes from real property rendered and placed on the assessment rolls and $6,198,138.73 from personal and mixed property rendered and placed on the assessment rolls; and that more than one-fourth of the total funds

derived from taxation in the City of Fort Worth in each of said fiscal years was derived from the taxation of personal and mixed property in said city.

That the fiscal year 1971-72 required that from the funds derived from taxation, the sum of $7,364,524 be expended for principal and interest payments on general obligation tax bonds outstanding, which bonds are owned and held by bona fide purchasers for value throughout not only the entire United States but the world, and that the requirement of rendition of property, real or personal and mixed, tangible and intangible, as a prerequisite to vote in a general obligation tax-levy bond election is a matter of compelling necessity to the City of Fort Worth by reason of the plain and simple fact that no property is more susceptible of

concealment then is personal and mixed, tangible and intangible, and further by reason of the fact that all citizens have a duty and obligation to render their property for taxation.

That as of December 31, 1971, the outstanding unpaid general obligation tax levy bond indebtedness of the City of Fort Worth was $92,852,000; that the defendant City Council of the City of Fort Worth as a matter of compelling necessity was required to meet its general obligation tax-levy bond payments during the fiscal year 1971-72 in the amount of $7,364,524; and that in excess of $1,840,000 of such $7,364,524 had to be obtained from taxes derived from the rendition of personal and mixed property in the City of Fort Worth.

B. Claims of Defendant, Crawford Martin, and Additional Relief Requested

(1) Defendant Crawford Martin adopts the claims of defendants, R. M. Stovall, Mayor; S. G. Johndroe, Jr., City Attorney; Roy A. Bateman, City Secretary; Leonard E. Briscoe, Taylor Gandy, Jess M. Johnston, Jr., W. S. Kemble, Jr., John J. O'Neill, Ted C. Peters, Pat Reece and Mrs. Margret Rimmer, Council Members; and the City of Fort Worth, a municipal corporation.

(2) One of the functions of the Office of the Attorney General, by statute, is to certify to the legality of proceedings underlying the issue of any proposed municipal bonds and the issuance of an opinion as to such legality prior to their registration by the Comptroller of Public Accounts of the State of Texas. (Art. 4398 R. C. S., Art. 709 R. C. S.)

(3) The position of the Attorney General's

Office is that the holding of the Texas Supreme Court in Montgomery Independent School District v. Crawford Martin, Attorney General of Texas, 464 S. W. 2d 638 (1971), is in complete accord with the provisions of the United States Constitution and should be so confirmed by this Court.

(4) The Attorney General positively asserts the validity of the Constitution of the State of Texas generally, and in particular the validity of Article VI, Sections 3 and 3(a) thereof, as being reflective of the will of the total electorate of this State who participated at the polls in the adoption of those provisos. The Attorney General further claims that those provisos of the Texas Election Code in question (Articles 5.03, 5.04 and 5.07) are valid by virtue of their adoption by the duly elected representatives of the total electorate of the

State of Texas.

(5) The State of Texas has a compelling interest in the maximum collection of all available ad valorem tax revenue for the support of its public improvements and those of its political subdivisions. The requirement of property rendition as prerequisite to voting in elections on propositions to issue bonds, expend money, assume debt or otherwise lend credit is the only practical method available to encourage those property owners who have failed in their legal duty to render and participate in the tax burden of the cost of public improvements, as specifically required by V. A. T. S., Articles 7145 and 7152.

(6) Irrespective of the Court's decision regarding the validity of the Texas constitutional and statutory provisions here in issue, the Attorney General prays that any decision of the

Court be made prospective in its application. A decision that the City of Fort Worth's bond election of April 11, 1972, was invalid, raises the inescapable implication that all Texas bond elections held in the same manner are invalid, thereby endangering the millions of dollars of outstanding tax bond obligations of the State and its political subdivisions by subjecting them to the possibility of taxpayers' suits enjoining the collection of taxes to pay such obligations, on the theory that the elections whereby they were authorized are void.

(7) The Attorney General further prays that no injunctive relief be granted to plaintiffs in this suit pending a final judgment upon the possible appeal of this case. In the event this Court should see fit to grant plaintiffs' requested injunctive relief, thereby enjoining the Attorney

General from giving further consideration to the provisions of Article VI, Sections 3 and 3(a), of the Texas Constitution, as well as Articles 5.03, 5.04 and 5.07 of the Texas Election Code in his examination of bonds offered for sale, the financing of tax supported public improvements in Texas will come to a standstill pending the appeal of this case to final judgment. As a practical matter, municipal bonds of this State and its political subdivisions will be unmarketable during the pendency of such an appeal. Plaintiffs' prayer that the Attorney General be enjoined from considering or giving any force or effect to Article VI, Sections 3 and 3(a), as well as Articles 5.03, 5.04 and 5.07 of the Texas Election Code, will be meaningless, in that neither investors nor recognized bond counsel, whose legal opinions as to validity are a market require-

ment, will be willing to have anything to do with bonds voted in any other manner, pending the appeal and a final judgment in this case.

5.

FACTS ESTABLISHED BY STIPULATION

1. That the defendant City of Fort Worth is a municipal corporation located in Tarrant County, Texas, and duly organized and existing under the Constitution and laws of the State of Texas and by home-rule Charter duly adopted by its electorate in December of 1924 under the provisions of Article XI, Section 5, of the Constitution of the State of Texas.

2. That at the time of the filing of this suit, defendant Crawford Martin was the duly elected Attorney General of the State of Texas.

3. That defendant S. G. Johndroe, Jr., is the duly appointed City Attorney of the City of Fort Worth.

4. That at the time of the filing of this suit and at the present time R. M. Stovall is the duly elected Mayor of the City of Fort Worth.

5. That the defendant Roy A. Bateman is the duly appointed City Secretary-Treasurer of the City of Fort Worth.

6. That at the time of the filing of this suit and at the present time the defendants, Leonard E. Briscoe, Taylor Gandy, Jess M. Johnston, Jr., W. S. Kemble, Jr., John J. O'Neill, Ted C. Peters, Pat Reece and Mrs. Margret Rimmer, are the duly elected members of the City Council of the City of Fort Worth.

7. That Plaintiffs' Exhibit "A" is a true and correct copy of the Charter of the City of Fort Worth, as amended.

8. That Chapter VI of the Charter of the City of Fort Worth provides for certain duties and responsibilities of the defendant S. G. Johndroe, Jr., as City Attorney, and reads as follows:

"DEPARTMENT OF LAW

"Section 1. In addition to the departments created and placed under the immediate control of the City Manager, there is hereby created another department, to be known as the Department of Law. The Director or head of this department shall be a competent practicing lawyer, of recognized ability, residing in the City, whose appointment shall be recommended by the Manager and approved by the Council. He shall serve for a period of two years from the date of his appointment, unless sooner discharged by the Council, either upon its own motion or upon the recommendation of the Manager, on account of his services not proving satisfactory; and of this matter the Council shall be the sole judge, and

their decision with respect thereto shall be final.

"Section 2. The Director of the Department of Law shall be known as the City Attorney, and shall have power to appoint such assistants as may be deemed necessary by him, subject to the approval of the Manager and the Council; such assistants to serve in the capacity as long as their services are satisfactory to the Council and the City Manager. The City Attorney and his assistants shall receive such compensation as may be fixed by resolution of the Council.

"Section 3. Duties of the City Attorney. -- He shall be the legal adviser of and attorney and counsel for the City and for all officers and departments thereof, in all matters relating to their official duties. He shall prosecute or defend all suits for and on behalf of the City in all the courts, and shall prepare all contracts, bonds and other instruments in writing in which the city is concerned, and shall endorse on each his approval as to the

for and legality thereof. No such bond, contract or instrument shall become effective without such endorsement by the City Attorney thereon.

"Section 4. He shall attend all sessions of the Council and make diligent investigation and report to the Council, or to the City Manager, or any director of departments, his opinion with respect to any legal matter submitted to him by any of them. He shall, either in person or by an assistant, act as Prosecuting Attorney in the Corporation Court. He shall prosecute all cases brought before such court and perform the same duties, as far as they are applicable thereto, as are required of the Prosecuting Attorney of the County. He shall maintain his office in the City Hall, in such place as may be provided by the Council, and shall freely confer with and advise the City Manager on all matters that may be referred to him by the City Manager. He shall prepare in correct legal form all ordinances passed by the Council.

"Section 5. The City

Attorney shall apply in the name of the City to a court of competent jurisdiction for an order of injunction to restrain any misapplication of the funds of the City, or the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the City in contravention of law, or which was procured by fraud or corruption.

"Section 6. When an obligation or contract made on behalf of the City granting a right or easement, or creating a public duty, is being evaded or violated, the City Attorney shall likewise apply for the forfeiture or the specific performance thereof, or for such relief as the nature of the case may require.

"Section 7. In case any officer or commission shall fail to perform any duty required by law, the City Attorney shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of such duty.

"Section 8. Taxpayers' Suits. -- In case the City Attorney, upon written request of three taxpayers of the City, fails to make any application provided for in any of the preceding three sections, such taxpayers may institute suit or proceedings for such purpose, in their own names, on behalf of the City; but no such suit or proceeding shall be entertained by any court until such request shall have been first made to the City Attorney, nor until the said taxpayers shall have given security for the costs of the proceedings.

"Section 9. The City Attorney and his assistants shall be responsible for the proper and efficient handling of the entire legal affairs, suits, pleas and litigation in which the City is interested. No extra counsel shall be employed to assist the City Attorney, save and except in cases of extraordinary importance and emergency, and then only on the written recommendation of the City Manager showing the necessity and importance of employing such additional legal assistance,

approved and adopted by the Council. In such contingency, the Council shall fix in advance, as far as practicable, the compensation to be allowed such extra counsel by resolution spread upon the minutes."

9. That Plaintiffs' Exhibit "B" (also identified as Exhibit I in Plaintiffs' First Amended Complaint) is a true and correct copy of Ordinance No. 6644, which ordinance was the ordinance calling the bond election held on the 11th day of April, 1972.

10. That Section 19 of Chapter XXV of the Charter of the City of Fort Worth reads as follows:

"Section 19. Issuance and Sale of Bonds. -- The City Council shall have authority to provide for the issuance and sale of bonds for permanent improvements and for any other legitimate municipal purpose as may be determined by the City Council; but no bonds shall be issued to fund any overdraft or indebtedness incurred

for current expenses of the city government, or any subdivision thereof. The City Council shall also have the right to fund any maturing bonds by the issuance of new bonds in lieu thereof at the same or a lower rate of interest. No bonds shall be issued or refunded that bear a greater rate of interest than five per cent per annum, and the same shall never be sold for less than par and accrued interest, and all bonds shall express upon their face the purpose or purposes for which they are issued.

"No bonds shall be issued unless authorized by ordinance, which ordinance shall provide an adequate fund from the taxes for the payment of the annual interest and sinking fund of not less than two per cent per annum for the ultimate redemption of such bond issue, and such ordinance shall become effective without the necessity of publication. Provided, that no bonds shall be issued, nor bonded debt created, unless authority therefor shall first be submitted to the qualified voters who pay taxes on property situated within the corporate limits of the City of Fort Worth; and, if a majority

of the votes cast at such election are in favor of the issuance of such bonds, then such issue shall be made; but, should the majority of the votes cast at said election be against the proposition, then such bonds shall not be issued. The City Council shall have full power and authority to prescribe the way and manner in which such election shall be held, the notice to be given therefor, the polling places in the various parts of the City at which the election is to be held, prescribe the form of ballot and the other details of said election, independently of the general election laws of the State of Texas. But this requirement as to submitting the question of the issuance of bonds to a vote of the people before the same can be authorized shall not apply to the refunding of bonds heretofore issued, where the same can be refunded at the same or a lower rate of interest, if in the judgment of the City Council the said bonds cannot be retired, either in whole or in part, at maturity. The said bonds when issued shall be submitted to and approved by the Attorney General of the State of Texas, as required by the statutes of this State, before being offered for sale in the

market."

11. That Section 29 of Chapter XXVIII of the Charter of the City of Fort Worth reads in part as follows:

> "Section 29. Elections -- Council to Provide for Holding Same -- Counting Returns and Declaring Result. -- The City Council shall make all necessary regulations concerning elections, the manner and method of holding same, by proper ordinances enacted for that purpose. Such regulations, however, shall be in keeping with the provisions of this Charter and shall be in keeping and consistent with the provisions of the State law applicable to elections in municipalities, insofar as the same may be practicable. ***"

That Section 30 of Chapter XXVIII of the Charter of the City of Fort Worth reads as follows:

> "Section 30. Oath of Office. -- Every officer of the City shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation, to be filed and kept in the office of the City Secretary, that he will support, protect and defend the Constitution and laws of the United States and of the State of Texas, and in all respects faithfully discharge the duties of his office or position. This provision shall apply to the City Manager and to the heads of departments."

12. That Article 709 of the Revised Civil Statutes of the State of Texas provides in part that

> "Before any bonds shall be offered for sale, *** the mayor *** shall forward the bonds to the Attorney General, together with a certified copy of the order or ordinance levying the tax to pay the interest and provide a sinking fund, and a statement of the total bonded indebtedness of the *** city ***, including the series of bonds proposed, together with the amount of the assessed value of the *** city *** for purposes of taxation as shown by the last official assessment of such *** city ***. Such

*** mayor shall also furnish the Attorney General with any additional information he may require."

13. That Article 709d of the Revised Civil Statutes of the State of Texas provides in part that

> "When *** the bonds of any incorporated city *** are offered for sale, the party offering, or proposing to sell, such bonds, obligations, and pledges shall first submit them to the Attorney General, who shall carefully inspect and examine the same in connection with the law under which they were issued, and shall diligently inquire into the facts and circumstances so far as may be necessary to determine the validity thereof; and, upon being satisfied that such bonds, obligations, and pledges were issued in conformity with law, and that they are valid and binding obligations, he shall thereupon certify to their validity, and his certificate to that effect, so procured by the party offering such bonds, obligations, and pledges as the case may be, shall be submitted to the Comptroller *** with the bonds,

> obligations, and pledges so offered for sale, and shall be carefully preserved by the Comptroller. ***"

14. That the Attorney General of Texas has duties which include the certification of the legality of proceedings underlying the issuance of any proposed municipal bonds and the issuance of an opinion as to such legality prior to their registration by the Comptroller of Public Accounts of the State of Texas.

15. That Article 4398 of the Revised Civil Statutes of the State of Texas provides as follows:

> "ATTORNEY GENERAL
> * * *
> "Art. 4398. To examine bonds
>
> He shall carefully examine all county and municipal bonds sent to him as provided by Article 709, in connection with the facts and the Constitution and laws on the subject of the execution of such

bonds, and if, as the result of such examination, he shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon the county, city, or town, by which they are executed, he shall so officially certify."

16. That prior to the holding of the election of April 11, 1972, the defendant City Secretary of the City of Fort Worth instructed each of the election judges for the bond election, and that such instruction basically required the separation of the votes of persons who owned taxable property which had been rendered for taxation from those of other qualified electors or voters who had not rendered property for taxation.

17. That the defendant City of Fort Worth and Roy A. Bateman made available two separate

affidavits for voters at the polling places on April 11, 1972, one of such affidavits being for persons owning taxable property which had been duly rendered or assessed for taxation, and the other affidavit being for persons who did not wish to sign an affidavit showing ownership of taxable property which has been duly rendered or assessed for taxation. These affidavits are Plaintiffs' Exhibits C-1 and C-2, and these exhibits are also identified as Exhibit K in Plaintiffs' First Amended Complaint.

18. That the returns of the municipal election of the City of Fort Worth held on April 11, 1972, were canvassed and approved by the City Council of said City in regular, open, public meeting on April 17, 1972, which canvass and approval reflect the following:

"Councilman Gandy made a

motion, seconded by Councilman Briscoe, that the tabulation of returns of the City of Fort Worth Bond Election held April 11, 1972, as prepared from the certified returns, submitted by the judges and clerks in each election precinct and presented by the City Secretary, be found correct, and that the votes cast on Proposition No. 1, as submitted were:

	Owners of Property Rendered for Taxation	Non-Rendererers	Total
For	13,466	4,094	17,560
Against	9,834	850	10,684

and that the votes case on Proposition No. 2 were:

For	10,849	3,758	14,607
Against	12,234	1,132	13,366

and that the tabulation of returns of said election be in all things approved and adopted. When the motion was put to a vote by the Mayor, it prevailed unanimously."

19. That prior to issuing and selling any general obligation bonds, it is a matter of

necessity to publish an official notice of sale thereof; to describe and provide for terms and specifications in the sale thereof; to make provision for redemption, denomination, type of bid and interest rates, and basis of award; to provide for a good faith deposit; to provide for printing and the furnishing of the purchaser's written opinion; to provide no-litigation certificates; to provide for delivery; to regulate future sales; and to prepare and furnish an official bid form; and that after the taking of bids thereon, it is necessary to provide a complete transcript of the proceedings, to adopt an ordinance levying the tax to pay the interest and provide a sinking fund, to provide a statement of the total bonded indebtedness of the City, including the series of bonds proposed, together with the amount of the assessed value of the real, personal and mixed

property in the City for purposes of taxation as shown by the last official assessment rolls, to submit the bonds to the Attorney General of Texas for inspection and certification pursuant to Article 709d of the Texas Revised Civil Statutes, and to furnish the Attorney General with any additional information that he may require.

20. That the defendant City Attorney, S. G. Johndroe, Jr., has advised the City Council of the opinion delivered March 10, 1971, in Montgomery Independent School District v. Crawford Martin, Attorney General of Texas, 464 S. W. 2d 638 (1971), wherein the Texas Supreme Court upheld the validity of Article 6, Section 3a, of the Texas Constitution when challenged on the ground that it violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United

States; and the Supreme Court of Texas also found that such provision did not violate, but strengthened, the Equal Protection Clause of the Fourteenth Amendment; and that the defendant City Attorney, S. G. Johndroe, Jr., as admitted in Paragraph 22 of the Original Answer of Defendants, R. M. Stovall et al., further advised the City Council of the City of Fort Worth of the procedural steps and necessary prerequisites prior to the issuance and sale of general obligation bonds as set out above in Stipulation No. 19.

21. That the defendants, City Council members of the City of Fort Worth, when acting as a body in their official capacity as City Council members and as the duly authorized governing body of the City of Fort Worth, have the "authority to provide for the issuance and sale of bonds for permanent improvements and

for any other legitimate municipal purpose as may be determined by the City Council"; and that such authority is conferred in part upon the City Council by Chapter XXV, Section 19, of the Charter of the City of Fort Worth.

22. That defendant Roy A. Bateman, in his capacity as City Secretary of the City of Fort Worth, had the following duties with respect to the April 11, 1972, City of Fort Worth bond election as set forth in Ordinance No. 6644 of the City of Fort Worth:

"SECTION 6.

"That the official ballots to be used shall be in compliance with the applicable provisions of Article 6.05 of the Election Code of the State of Texas, as amended, and shall have written or printed thereon the following:

PROPOSITION NO. 1.

"Place an 'X' in the square

beside the statement indicating the way you wish to vote.

☐ FOR

☐ AGAINST

Shall the City of Fort Worth, Texas, through its City Council, issue its negotiable coupon bonds in the principal sum of Three Million Dollars ($3,000,000.00) for the legitimate municipal purpose of acquiring, equipping and improving the physical equipment and personal property of the Fort Worth Transit Company, a private corporation, and acquiring the necessary lands therefor, said bonds being payable serially as may be determined by the City Council, so that the last maturing bonds shall become payable within forty (40) years from the date thereof, bearing interest at a rate not to exceed the maximum prescribed by the law at the time of the issuance thereof, payable

semi-annually, and levy a sufficient tax to pay the interest on said bonds and create a sinking fund sufficient to redeem said bonds at the maturity thereof?

PROPOSITION NO. 2.

"Place an 'X' in the square beside the statement indicating the way you wish to vote.

☐ FOR

☐ AGAINST

Shall the City of Fort Worth, Texas, through its City Council, issue its negotiable coupon bonds in the principal sum of Six Million, Eight Hundred Sixty-Thousand Dollars ($6,860,000.00) for the purpose of making permanent city improvements by constructing, building, improving and equipping buildings for the public library system and acquiring the necessary lands therefor,

said bonds being payable serially as may be determined by the City Council, so that the last maturing bonds shall become payable within forty (40) years from the date thereof, bearing interest at a rate not to exceed the maximum prescribed by law at the time of the issuance thereof, payable semi-annually, and levy a sufficient tax to pay the interest on said bonds and create a sinking fund sufficient to redeem said bonds at the maturity thereof?

"SECTION 7.

"That the City Secretary is hereby ordered and directed to prepare and issue ballots for absentee voting and for the special election and to stamp same 'Official Ballot,' on which ballots shall be printed the propositions hereinabove set forth.

****

"SECTION 10.

"That the City Secretary shall furnish election officials said ballots,

together with any other forms, blanks or instructions in accordance with the Charter of the City of Fort Worth, Texas, and the laws of the State of Texas insofar as same are applicable, and the provisions of this ordinance unless a court of competent jurisdiction orders otherwise.

"SECTION 11.

"That the way and manner of holding this election, the notice to be given therefor, the polling places, the personnel of the officers, precinct judges and substitutes therefor who are to hold the same, and all details connected with the holding of the election shall be determined and arranged by the City Council and administered under the direction of and by the City Secretary.

****

"SECTION 13.

"That the City Secretary is hereby authorized and directed to cause notice of said election to be given by posting a substantial copy of this election order in each of the election precincts of said

City and also at the City Hall. That this notice of said election shall also be published on the same day in each of two (2) successive weeks in a newspaper of general circulation published within said City, the date of the first publication to be not less than fourteen (14) days prior to the date set for said election, and the City Secretary shall see that proper publication is made and proper notice of this election is given, in full conformity with the Charter of the City of Fort Worth, Texas, and the applicable statutes of the State of Texas."

23. That on the 13th day of March, 1972, the City Council of the City of Fort Worth adopted Ordinance No. 6644, which provided for the submission of two propositions to the electorate of the City of Fort Worth, the election to be held on April 11, 1972; and that such propositions are set out in Stipulation No. 22 above (Section 6 of Ordinance No. 6644).

That Ordinance No. 6644 provided in Section 3 thereof for the holding of two separate but simultaneous elections, as follows:

"SECTION 3.

"That said election shall be held and conducted, in effect, as two separate but simultaneous elections, to-wit: One election at which only the resident, qualified electors who own taxable property in the City and who have duly rendered the same for taxation shall be entitled to vote on said propositions, and another election at which all other resident, qualified electors of the City shall be entitled to vote on said propositions. The votes cast at each of said separate but simultaneous elections shall be recorded, returned and canvassed separately. It is hereby declared that the purpose of holding the election in such manner is to ascertain arithmetically:

(a) The aggregate votes cast at the election for and against said propositions by resident, qualified electors of the

City; and also

(b) The aggregate votes cast at the election for and against said propositions by resident, qualified electors who own taxable property in the City and who have duly rendered the same for taxation.

Each elector shall be entitled to vote once on each of the propositions in accordance with the foregoing provisions of this ordinance.

"That the above and foregoing dual election procedure shall be followed unless a court of competent jurisdiction orders otherwise."

24. The Attorney General's policy in the approval of general obligation tax bonds since December 19, 1969, has been that each proposition must be approved by the property-owning ad valorem taxpayers whose property has been duly rendered (as required by Article 6, §§ 3 and 3(a) of the Texas Constitution) and each pro-

position must also receive the approval of the aggregate vote of property-owning ad valorem taxpayers whose property has been duly rendered and all other qualified electors (the test required by the Phoenix case).

This position was taken to insure that all general obligation tax bonds voted in Texas would be in full compliance with the Texas law and at the same time be protected in the event the Supreme Court of the United States subsequently holds the Texas voter qualification test for tax bond elections invalid. As a practical matter, until such time as the Texas law is tested in the Federal Courts, the municipal bonds of this State and its political subdivisions would be unmarketable without this protective procedure.

The Texas Supreme Court in Montgomery Independent School District v. Crawford Martin,

Attorney General of Texas, 464 S. W. 2d 638 (1971), has spoken on the question of who shall vote in general obligation tax bond elections in Texas and it is incumbent upon the Attorney General of Texas to insure that the directives of that Court are complied with in the approval of tax bonds. In those instances when tax bonds are not involved, the decisions of the United States Supreme Court in Kramer v. Union Free School District, 395 U. S. 621 (1969), and Cipriano v. City of Houma, 395 U. S. 701 (1969), are followed.

24A. If Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, were present in court, he would testify under oath that the requirement of rendition of property, personal and mixed, tangible and intangible, as a prerequisite to vote in a general obligation bond election is a matter of compelling necessity by

reason of the plain and simple fact that no property is more susceptible of concealment than is personal and mixed, tangible and intangible property.

He would further testify, if he were present in court, that for the year 1970, the total personal property rendered for taxation in Texas amounted to $3,996,729,956.00 and for the year 1971 amounted to $4,261,631,147.00, which is an increase of 6.23%. This increase of $264,901,191.00 in personal property renditions for the year 1971 constitutes 11.59% of the over-all increase in renditions of real, personal and mixed property over that rendered in 1970, which produces dollar-wise an additional $529,802.38 in revenues to the State. The total approximate revenues to the State as a result of ad valorem tax on personal property in the year 1971 amounted

to approximately $8,523,262.30.

24B. If Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, were present in court, he would testify under oath that the requirement of rendition and disclosure of property for purposes of ad valorem taxation is of the utmost importance, that there is a compelling necessity for an effective system of tax assessment and collection, and that such a system is mandatory for the orderly creation of, payment of and discharge of tax bond obligations.

25. That the declared intent of the City Council of the City of Fort Worth with respect to the sale and issuance of the general obligation tax-supported bonds as declared in the adoption of Ordinance No. 6644 was as follows:

"SECTION 8.

"That in the event the tax-

supported bonds are authorized at the special election hereby ordered, the City Council of the City of Fort Worth, Texas, may issue for sale any part or portion of said amounts at such time and times as in the judgment of the City Council it determines that a lawful interest and sinking fund may be provided for to take care of and discharge any part or portion of the bonds so issued for sale, it being the purpose of this section to make clear that the City Council of the City of Fort Worth, Texas, may not be required to issue the full amount of the series of the bonds as herein submitted but may issue for sale any portion of the same at such time and times as it determines advisable, under the authority hereby conferred after said election."

26. That assuming the requirements in Articles 5.03, 5.04 and 5.07 of the Texas Election Code and in Article 6, Sections 3 and 3a, of the Texas Constitution (which statutory and constitutional provisions all defendants have

taken an oath "to support, protect and defend") did not exist, and assuming the policy of the Attorney General of Texas, as set forth in Stipulation No. 24 above, had never been announced and declared, then the City Council of the City of Fort Worth could exercise its independent legislative judgment and discretion and by ordinance would take such steps and procedures necessary to prepare for the issuance and sale of the Library Bonds submitted in Proposition No. 2 (Section 6 of Ordinance No. 6644).

27. That assuming the requirements in Articles 5.03, 5.04 and 5.07 of the Texas Election Code and in Article 6, Sections 3 and 3a, of the Texas Constitution (which statutory and constitutional provisions all defendants have taken an oath to "support, protect and defend") did not

exist, and assuming the policy of the Attorney General of Texas as set forth in Stipulation No. 24 above had never been announced and declared, and assuming that the City Council of the City of Fort Worth determined it advisable, in the exercise of its independent legislative judgment and discretion, to take such steps and procedure necessary to prepare for the issuance and sale of the Library Bonds submitted in Proposition No. 2 (Section 6 of Ordinance No. 6644), then and in such event the defendant Mayor of the City of Fort Worth, acting in his official capacity, would, as soon as possible and as soon as is consistent with orderly procedure and due care, inasmuch as Proposition No. 2 in the April 11, 1972, bond election received a majority of votes cast by all non-rendering and rendering voters of the City of Fort Worth, Texas, and before any of such

bonds were offered for sale, cause to be forwarded to the Attorney General the bonds and a transcript thereof, together with a certified copy of the order or ordinance levying the tax to pay the interest and provide a sinking fund, and the statement of the total bonded indebtedness of the City, including the series of bonds proposed, together with the amount of the assessed value of the City for purposes of taxation as shown by the last official assessment of such City, and would also furnish the Attorney General with any additional information he might require.

28. That on April 17, 1972, the City Council of the City of Fort Worth, Texas, while in regular session, unanimously adopted the following motion:

> "Councilman Gandy made a motion, seconded by Councilman Briscoe, that the City Council go

on record as stating that if the legal entanglements did not exist, the City would proceed to sell the library bonds voted April 11, 1972, to build a new central library, provided the other terms and conditions surrounding the sale of the bonds and construction bid procedures were reasonable and acceptable to the City Council, and when the motion was put to a vote by the Mayor, it prevailed unanimously."

29. That some time after the bond election held on April 11, 1972, defendant S. G. Johndroe, Jr., City Attorney of the City of Fort Worth, Texas, advised the City Council of said City "that the Attorney General has refused to certify bonds approved in identical circumstances, and it would be pointless to submit the Library Bonds (that is, the bonds submitted in Proposition No. 2) to the Attorney General," and he generally advised the City Council of the City of Fort Worth that it is just the same as if the issue had failed.

30. That assuming that the requirements in Articles 5.03, 5.04 and 5.07 of the Texas Election Code and in Article 6, Sections 3 and 3a, of the Texas Constitution (which statutory and constitutional provisions all defendants have taken an oath "to support, protect and defend") did not exist, and assuming that the policy of the Attorney General of Texas, as set forth in Stipulation No. 24 above, had never been announced and declared, and further assuming that the City Council of the City of Fort Worth had exercised its independent legislative judgment and discretion and had the City Attorney take such steps and procedure necessary for him to prepare for the issuance and sale of the Library Bonds submitted in Proposition No. 2 (Section 6 of Ordinance No. 6644), then and in that event the defendant City Attorney of the City of Fort

Worth would prepare all instruments and documents necessary for the issuance and sale of the Library Bonds and endorse his approval thereon.

31. That on April 11, 1972, plaintiffs Michael L. Stone, Dorothy I. Ellis, Pat (Mrs. George A.) Crowley, James D. Henderson and Marjorie M. Watson were resident, qualified electors of the City of Fort Worth, the State of Texas, and the United States, and all of the plaintiffs remain such resident, qualified voters to this date.

32. That plaintiff Pat Crowley is one and the same person as "Mrs. George A. Crowley," who holds Tarrant County Voter Registration Certificate No. A-137229.

33. That all of the plaintiffs voted in the City of Fort Worth bond election held on April 11, 1972; that all of the plaintiffs cast ballots on

both of the propositions submitted; and that all of the plaintiffs voted "for" (in favor of) the Library Bonds, Proposition No. 2.

34. That plaintiffs Michael L. Stone, Dorothy I. Ellis and James D. Henderson voted as qualified voters of the City of Fort Worth and not as rendering property owners, and that they voted "for" (in favor of) Proposition No. 2. (See Affidavit, Plaintiffs' Exhibit E; also identified as Exhibit C in Plaintiffs' First Amended Complaint)

35. That plaintiffs Pat Crowley and Marjorie M. Watson voted in the City of Fort Worth bond election on April 11, 1972, as rendering property owners, and that they voted "for" (in favor of) Proposition No. 2. (See Affidavit, Plaintiffs' Exhibit F; also identified as Exhibit D in Plaintiffs' First Amended Complaint)

36. That all of the above plaintiffs are

fully competent to testify to the matters of fact contained in Stipulations Nos. 31 through 35, inclusive, and that each plaintiff has personal knowledge of that portion of such facts which pertain directly to him.

37. That if plaintiffs Michael L. Stone, Dorothy I. Ellis, Pat Crowley, James D. Henderson and Marjorie M. Watson were present in court, they would testify under oath to the matters of fact stipulated by the parties hereto in Stipulations Nos. 31 through 35, inclusive.

That the defendants stipulate that they have no evidence or testimony to present to this Court which would in any way contradict or impeach the truth of the matters of fact stated in Stipulations Nos. 31 through 35, inclusive.

38. That all of the bonds proposed to be issued under Proposition No. 2 (Library Bonds)

would be general obligation, tax-supported bonds.

39. That the principal of and interest on general obligation, tax-supported bonds issued and sold by the City of Fort Worth to bona fide purchasers for value are paid solely from the revenues from taxes levied, assessed and collected by the City of Fort Worth from persons who own real, personal or mixed property which has been rendered for taxation.

40. That if defendant Roy A. Bateman were present in court, he would testify under oath that the requirement of rendition of property, personal and mixed, tangible and intangible, is a matter of vital importance and necessity to local taxing authorities by reason of the plain and simple fact that no property is more susceptible of concealment than is personal and mixed, tangible and intangible property; and

and that the requirement of voluntary rendition and disclosure of such property for purposes of ad valorem taxation is of the utmost importance and vitally necessary for an effective system of ad valorem tax assessment and collection and is directly and inextricably related to the creation of, payment and discharge of tax-supported bond obligations.

41. That if defendant Roy A. Bateman were present in court, he would testify under oath that the ad valorem tax is the life blood of local government financing and that the increasing burdens of local needs and inflation make ever increasing demands on local governments for additional tax revenues.

42. That if defendant Roy A. Bateman were present in court, he would testify under oath that the principal and interest on general

obligation, tax-supported bonds issued by the City of Fort Worth are, and will be, paid solely from the proceeds derived from taxes levied, assessed and collected from persons who own real, personal or mixed property which has been duly rendered for taxation; that the assessed valuation of real (including improvements), personal and mixed property in the City of Fort Worth for the fiscal year 1970-71 was $1,370,483,290; that of such assessed valuation, real property constituted $1,017,895,540, and personal and mixed property amounted to $352,587,750; that the assessed valuation of real (including improvements), personal and mixed property in the City of Fort Worth for the fiscal year 1971-72 was $1,444,024,440; and that of such assessed valuation, real property constituted $1,077,271,500 and personal and mixed property amounted to

$366,752,240.

43. That if defendant Roy A. Bateman were present in court, he would testify under oath that for the year ending September 30, 1970, the City of Fort Worth derived $16,388,154 in taxes from real property rendered and placed on the assessment rolls and $5,676,669 from personal and mixed property rendered and placed on the assessment rolls; that for the year ending September 30, 1971, the City of Fort Worth derived $18,205,947.35 in taxes from real property rendered and placed on the assessment rolls and $6,198,138.73 from personal and mixed property rendered and placed on the assessment rolls; and that more than one-fourth of the total funds derived from taxation in the City of Fort Worth for the years 1970-71 was derived from the taxation of personal and mixed property in said City.

44. That if defendant Roy A. Bateman were present in court, he would testify under oath that the fiscal year 1971-72 will require that from the funds derived from taxation, the sum of $7,364,524 must be allocated for principal and interest payments on general obligation tax bonds outstanding, which bonds are owned and held by bona fide purchasers for value throughout not only the entire United States but the world, and that the requirement of rendition of personal and mixed property, tangible and intangible, as a prerequisite to vote in a general obligation bond election is a matter of compelling necessity to the City of Fort Worth by reason of the plain and simple fact that no property is more susceptible of concealment than is personal and mixed, tangible and intangible property.

That as of December 31, 1971, the outstanding unpaid general obligation tax bond indebtedness of the City of Fort Worth was $92,852,000.

That the City Council of the City of Fort Worth must provide funds to meet its outstanding general obligation tax bond payments during the fiscal year 1971-72 in the amount of $7,364,524, and that in excess of $1,840,000 of such $7,364,524 must be obtained from taxes derived from the rendition of personal and mixed property in the City of Fort Worth.

45. That the defendant Roy A. Bateman is fully competent to testify to the above matters of fact contained in Stipulations Nos. 40 through 44, inclusive, and as Treasurer of the City of Fort Worth, he has personal knowledge of such facts.

46. That plaintiffs stipulate that they have

no evidence or testimony to present to this Court other than that contained in the foregoing stipulations which will in any way contradict or impeach the truth of the matters of fact stated in Stipulations Nos. 24, 24A, 24B, 40, 41, 42, 43, 44 and 45. That plaintiffs do not, however, stipulate that these reasons are sufficient to deny some resident, qualified voters of these taxing authorities the right to have their vote fully counted in bond elections, nor do they admit that these reasons satisfy the legal tests of Kramer v. Union Free School District, 395 U. S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969), to the effect that restrictions on the right of otherwise qualified voters to vote (other than those of age, residence, etc.) must be necessary to promote a compelling State interest. 395 U. S. 621 at 627, 89 S. Ct. 1886 at 1890, 23 L. Ed. 2d 583 at 589.

Furthermore, the plaintiffs object to any testimony that there is a compelling necessity for exclusion of non-property owners in this type of election on the grounds that such testimony is a conclusion of law on the part of the witness and that such testimony invades the province of the Court in deciding questions of law.

47. On April 11, 1972, the City of Fort Worth in fact held a bond election submitting two propositions to the voters: Proposition Number 1 provided for approval or non-approval by the voters of bonds for a transportation system; Proposition Number II provided for approval or non-approval of bonds by the voters for library facilities. On April 11, 1972, the following votes were cast and recorded on Proposition Numbers I and II in such Fort Worth city bond election:

Owners of Property Rendered for Taxation		Non-Renderers	Total
Proposition I			
For	13,466	4,094	17,560
Against	9,834	850	10,684
Proposition II			
For	10,849	3,758	14,607
Against	12,234	1,132	13,366

48. The defendant City of Fort Worth, with the appropriate approval by the defendant City Council members of the City of Fort Worth, the defendant Mayor R. M. Stovall, and the defendant City Attorney S. G. Johndroe, Jr., has sold the Transportation System bonds approved by the voters of the City of Fort Worth in Proposition Number I in the April 11, 1972 bond election.

6.

CONTESTED ISSUES OF FACT

The defendants contend that there are no contested genuine issues of material fact.

The plaintiffs contend that there are the following contested issues of fact:

(1) That the manner in which the election was held tended to deter non-property owners, or those who were not willing to affirm ownership or rendition of property, from voting.

(2) That there is no necessity in support of a compelling State interest to hold elections in the manner in which the April 11, 1972, election was held by the City of Fort Worth.

7.

CONTESTED ISSUES OF LAW

(a) Whether or not plaintiffs have failed to state a claim upon which relief can be granted.

(b) Whether or not the six (6) plaintiffs represent a class.

(c) Whether or not the facts in this cause entitle plaintiffs to injunctive relief under the provisions of 42 U. S. C., Section 1983.

(d) Whether or not plaintiffs are entitled to injunctive relief and a declaratory judgment, all as prayed for in their First Amended Complaint.

(e) Whether or not Article 6, Sections 3 and 3a, of the Texas Constitution and Articles 5.03, 5.04 and 5.07 of the Texas Election Code are unconstitutional on the ground that they violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

8.

TESTIMONY

There will be no oral testimony.

9.

EXHIBITS

Counsel for each party have examined certain exhibits and, reserving all trial or hearing objections thereto save only those of authenticity, number them as follows:

Plaintiffs' exhibits marked Plaintiffs' Exhibit "A" through Plaintiffs' Exhibit "F", inclusive.

Defendants' City of Fort Worth et al. exhibits marked as Defendant City Exhibit "A", Defendant City Exhibit "A-1", Defendant City Exhibit "B" and Defendant City Exhibit "C".

Defendant's Crawford Martin exhibit marked Defendant Attorney General's Exhibit "A".

All of such exhibits are admitted into evidence.

10.

ADDITIONAL MATTERS

There are no additional matters known to the parties that will aid the Court in disposing of the case.

11.

BRIEFS

The parties may furnish briefs to the Court which shall be filed not later than the _____ day of _____, 19___.

RENDERED AND SIGNED this the 8th day of November, 1972.

_____
UNITED STATES DISTRICT JUDGE

APPROVED:

Don Gladden
Attorney for Plaintiffs

S. G. Johndroe, Jr.
Attorney for Defendants
R. M. Stovall, Mayor;
S. G. Johndroe, Jr., City
Attorney; Roy A. Bateman,
City Secretary; and the
City of Fort Worth and its
City Council Members

Robert B. Davis,
Assistant Attorney General
Attorney for Defendant,
Crawford Martin, Attorney
General